In terms of "limits," the trustee's lawsuit in this case is not essentially different from actions in other cases cited in our initial brief where recoveries were obtained by Chapter X trustees against indenture trustees for bondholders or debenture holders, with the proceeds of such recoveries going to those security holders and not to the estate generally.[1] The trustee here, in effect, seeks to have restored to the debenture holders so much of the debtor's estate as allegedly would have been available to pay the balance due on the debentures had it not been for Marine's misconduct.

3. Pervading Marine's brief is a response to an argument which neither petitioner nor the Commission has made. Only Marine has contended that the Chapter X trustee's suit on behalf of the debenture holders would "sweep the field clean of other proceedings" by preempting other suits by investors (Br. 9; and see Br. 20, 21, 22, 39 and 40). Neither the Commission nor petitioner has argued that the Chapter X trustee should be deemed to be authorized by the Bankruptcy Act to serve as "the exclusive enforcer of *all* claims of investors against third parties * * * " (Br. 22, emphasis in original); nor have we argued, as Marine contends (Br. 39), that there is a need for preemptive suits brought by Chapter X trustees in their representative capacities.

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[1] See *In re Solar Manufacturing Corp.*, 200 F. 2d 327 (C.A. 5), certiorari denied *sub nom., Marine Midland Trust Co. v. McGirl*, 345 U.S. 940, and *Clarke v. Chase National Bank*, *supra*, 187 F. 2d at 801; cf. *Prudence-Bonds Corps. v. State Street Trust Co.*, 202 F. 2d 555 (C.A. 2), certiorari denied, 346 U.S. 835.

While, for reasons stated in the petitioner's and the Commission's briefs, a Chapter X trustee would normally be in a better position to provide debenture holders with more vigorous and effective representation than they might receive in a class action, it is possible that a court might determine in particular circumstances that a pending class action would afford greater protection to the rights of investors involved. The question is not one of preemption, as Marine suggests; it is simply a question of the standing of the trustee to bring the action.

For the foregoing reasons and for the reasons stated in our main brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

Respectfully submitted.

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